

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) Criminal No. 99-244
)
v.) Judge Ronald L. Buckwalter
)
SGL CARBON AKTIENGESELLSCHAFT and) Filed: 6/11/99
ROBERT J. KOEHLER,)
)
Defendants.)

GOVERNMENT'S SENTENCING MEMORANDUM

I. BACKGROUND

The United States, Robert J. Koehler and SGL Carbon Aktiengesellschaft (SGL AG), have entered into plea agreements pursuant to which the defendants will waive indictment and plead guilty to participating in a worldwide conspiracy to fix the price of graphite electrodes from at least July 1992 and continuing into June 1997.

On June 5, 1997, SGL Carbon Corporation (a wholly-owned United States subsidiary of SGL AG) was served with a federal search warrant as was another corporate subject of the investigation. Additional corporate subjects were served with subpoenas. At about this time, officials of the European Union also commenced an investigation of SGL AG and others in Europe. The Carbide/Graphite Group, a relatively small United States producer of graphite electrodes, began cooperating with this office pursuant to the Antitrust Division's Corporate Leniency Policy. On June 5, 1997, C/G publicly announced its cooperation.

SGL AG's guilty plea will be the fourth corporate plea to be entered in this investigation. Mr.

Koehler is the first individual to plead. The pleas entered to date, all in the Eastern District of Pennsylvania are:

<u>Defendant</u>	<u>Date</u>	<u>Sentence</u>	<u>District Judge</u>
Showa Denko Carbon	9/8/98 ¹	\$32.5 million	Lowell A. Reed, Jr.
UCAR International Inc.	4/24/98	\$110 million	Charles R. Weiner
Tokai Carbon Co. Ltd.	5/20/99	\$6 million	Clarence C. Newcomer

The investigation is continuing against both individuals and corporations. SGL AG and several of its employees and Mr. Koehler have agreed to cooperate in the continuing investigation. Their cooperation (already begun) will be substantial and form the basis for the Government's motion for a downward departure.²

II. THE GRAPHITE ELECTRODES CARTEL

Graphite electrodes are used in the steel making process to conduct heat and melt scrap steel. They are used primarily by "mini-mills" in the production of steel in electric arc furnaces (EAF), the steel-making technology used by all mini-mills, and for refining steel in ladle furnaces. Graphite electrodes are large columns (usually 24 to 30 inches in diameter by eight feet in length) used in electric arc furnaces, cost thousands of dollars, and because of the intense heat generated, they are consumed in the steel-making process. The cartel affected sales of graphite electrodes in the United States and elsewhere.

¹ Although Showa Denko was sentenced after UCAR, the plea agreement and case filing predated the UCAR case.

² Prior to sentencing, the United States will make a formal written motion for a downward departure for Mr. Koehler based on substantial assistance. The United States will outline the nature and value of his cooperation in a memorandum filed under seal.

Competitors in the graphite electrode industry talked about prices long before the charged conspiracy, but due to lack of discipline and industry overcapacity, price-fixing attempts were generally ineffective. By 1992, however, due to consolidation in the industry and restructuring at major producers such as UCAR and SGL, the cartel began to gel and the basic principles that would guide the conspirators were agreed to at a cartel meeting in London in May 1992. At this meeting, attended by representative of SGL AG, UCAR, Showa Denko, Tokai and others, the conspirators agreed to the following:

- C the need for significant price increases throughout the world;
- C price increases were to be initiated by a market leader and followed by others³;
- C all forms of discounts were to cease including rebates and consumption guarantees; and
- C existing market shares were to be respected with conspirators focusing on their home market.

At the time the conspiracy was formalized, total graphite sales in the United States were approximately \$275 million per year. Market shares in the United States were approximately:⁴

UCAR International	34%
SGL Carbon	23%
Showa Denko	18%
Carbide Graphite	18%
Others	6%
Tokai	1%

³ The United States price increases were to be led by UCAR because it was the largest United States producer and had the largest market share in the United States.

⁴ While these market shares are approximations, they do accurately reflect the relative positions of the companies.

Over the course of the conspiracy, graphite electrode prices increased over 60% through a series of collusive and fixed price increases:

January 1992	\$.95/lb.	July 1994	\$1.26/lb.
May 1992	\$1.00/lb.	April 1995	\$1.33/lb.
January 1993	\$1.06/lb.	February 1996	\$1.43/lb.
June 1993	\$1.13/lb.	February 1997	\$1.56/lb.
January 1994	\$1.21/lb.		

During the course of the conspiracy, prices were discussed, problems ironed out, discipline instilled and agreements reached through a series of meetings designated as “top level” and “working group.” Top level meetings were attended by company presidents, including Mr. Koehler, and held for the purpose of setting direction and resolving major disputes among the conspirators. Working level meetings were held among subordinates more intimately knowledgeable about pricing in particular countries and at particular accounts. The first top level meeting was in London in May 1992, and it was followed by more than a dozen top level and working group meetings in various countries during the course of the conspiracy.

III. FACTUAL BASIS FOR THE PLEA

Section One of Title 15 (Sherman Act), United States Code, provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

The elements of a Sherman Act offense, each of which the United States must prove beyond a reasonable doubt, are:

- (1) the conspiracy charged was formed, and it was in existence at or about the time

alleged;

- (2) the defendants knowingly formed or participated in that conspiracy; and
- (3) the activity which was the object of the conspiracy was within the flow of, or substantially affected, interstate or foreign commerce.

A. Robert J. Koehler

Robert J. Koehler, age 50, became the CEO of SGL AG in 1992, and held this position throughout the charged conspiracy. During this time, Mr. Koehler was also the Chairman of the Board of SGL AG. From February 1992 until June 1996, Mr. Koehler was also Chairman of the Board of SGL Carbon Corp., the wholly owned United States subsidiary of SGL AG.

Had this case gone to trial, the United States would have proven beyond a reasonable doubt that there was a price-fixing conspiracy among the major producers of graphite electrodes beginning as early as July 1992 and continuing until at least June 1997. The United States also would have proven that Mr. Koehler knowingly joined the conspiracy and, in fact, was at all of the cartel's top level meetings during the course of the conspiracy. He also attended other meetings and had phone conversations in furtherance of the conspiracy. The defendant agreed on behalf of SGL AG to the tenets of the conspiracy including the price increases imposed on customers in the United States. Finally, the United States would have proven that this worldwide cartel was within the flow of, or substantially affected, interstate commerce through the sales of graphite electrodes and payment therefor across state and country borders.

B. SGL AG

SGL AG is a German company and the parent of SGL Carbon Corporation, a United States

subsidiary. SGL AG is also the parent of various other subsidiaries, collectively known as the “SGL Carbon Group.” SGL Carbon Corporation is headquartered in Charlotte, North Carolina and manufactured and sold graphite electrodes in the United States which were affected by the conspiracy. SGL AG represents itself as the world’s largest producer of carbon and graphite products and the United States accounted for about one-third of the SGL Carbon Group’s total sales of graphite electrodes.

Had this case gone to trial, the United States would have proven that SGL AG joined and participated in the graphite electrodes cartel through the activities of Robert J. Koehler and other officers and employees who had the actual and apparent authority to bind the corporation. Mr. Koehler agreed with his co-conspirators to fix the price of graphite electrodes in the United States and elsewhere from at least as early as July 1992 and continuing until at least June 1997. The price increases in the United States, led by UCAR International, were followed by SGL Carbon Corporation at the direction of Mr. Koehler. Also at Mr. Koehler’s direction, SGL Carbon Corporation reduced, and in many cases eliminated, various forms of discounting in the United States. Accordingly, United States customers of graphite electrodes were affected by the charged conspiracy through substantial collusive price increases.

As stated earlier, the charged conspiracy was within the flow of, and substantially affected interstate commerce through the sales of graphite electrodes and payments therefor across state and international borders.

IV. PLEA AGREEMENTS

The guilty pleas in this case will be entered pursuant to plea agreements between the defendants

and the Antitrust Division.

A. Robert J. Koehler

Robert J. Koehler will enter a plea of guilty in the Eastern District of Pennsylvania pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, to a one-count criminal Information charging him with participating in a conspiracy to restrict competition by fixing the price and allocating the volume of graphite electrodes sold in the United States and elsewhere from at least as early as July 1992 and continuing until at least June 1997 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

Also pursuant to the Plea Agreement, the United States and Robert J. Koehler agree to jointly recommend that the Court impose a sentence requiring Mr. Koehler to pay a fine to the United States in the amount of \$10 million over a period of five years. The first payment in the amount of \$1 million will be due within ninety days from the date of imposition of sentence. Thereafter, the defendant shall make five payments, each on the yearly anniversary of the date of sentencing, according to the following schedule: \$1 million on the first anniversary of the date of sentencing; and four successive payments of \$2 million will be payable on each of the second, third, fourth, and fifth anniversaries of the date of sentencing. Pursuant to 18 U.S.C. § 3612(f)(3)(A), the interest shall be waived due to Mr. Koehler's inability to pay.⁵ The agreed-upon fine is within the United States Sentencing Guidelines fine range as described below.

The United States and Robert J. Koehler further agree that the appropriate disposition of the case is, and agree to jointly recommend that the Court impose a sentence requiring Robert J. Koehler

⁵ SGL AG agrees to guarantee the payment of the \$10 million criminal fine called for in the Plea Agreement between the United States and Robert J. Koehler.

to pay no restitution and to serve no term of imprisonment, probation, community confinement or home detention. The United States and Robert J. Koehler will also jointly request that the Court accept Mr. Koehler's guilty plea and immediately impose sentence on the day of arraignment. Should the Court reject the agreed-upon disposition of the case, Mr. Koehler will be free to withdraw his plea.

Robert J. Koehler has agreed to fully cooperate with the United States in the conduct of the present investigation of the graphite electrode industry and any litigation or other proceedings to which the United States is a party resulting therefrom. Such cooperation includes, but is not limited to, the production of relevant documents under the control of Robert J. Koehler, making himself available upon reasonable notice, not at the expense of the United States, for interviews in the United States and at other mutually agreed-upon locations, and responding fully and truthfully to all inquiries of the United States in connection with the present investigation of the graphite electrode industry and any litigation or other proceedings to which the United States is a party resulting therefrom. Such cooperation also includes testifying truthfully in trial and grand jury proceedings.

Also pursuant to the Plea Agreement, the United States agrees, subject to the continuing full cooperation of Robert J. Koehler, not to bring further criminal proceedings against Robert J. Koehler for any act or offense committed prior to the date of the Plea Agreement undertaken in connection with any antitrust conspiracy involving the manufacture or sale of graphite and carbon products.

B. SGL AG

SGL AG will enter a plea of guilty in the Eastern District of Pennsylvania pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, to a one-count criminal Information charging the company with participating in a conspiracy to restrict competition by fixing the price and

allocating the volume of graphite electrodes sold in the United States and elsewhere from at least as early as July 1992 and continuing until at least June 1997 in violation of the Sherman Act, 15 U.S.C. § 1.

The Plea Agreement also calls for the United States and SGL AG to jointly recommend that the Court impose a sentence requiring SGL AG to pay a fine to the United States in the amount of \$135 million as an appropriate disposition of the case. The first payment in the amount of \$13.5 million will be due within ninety days from the date of imposition of sentence. Thereafter, the defendant shall make five payments, each on the yearly anniversary of the date of sentencing, according to the following schedule: \$13.5 million on the first anniversary of the date of sentencing and thereafter, four successive payments of \$27 million on each of the second, third, fourth and fifth anniversaries of the date of sentencing. Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest shall be waived due to SGL AG's inability to pay.⁶ Although the United States Sentencing Guidelines fine range exceeds the agreed-upon fine, the United States agrees to recommend that the Court impose a sentence requiring SGL AG to pay a fine to the United States in the amount of \$135 million due to SGL AG's inability to pay. The United States and SGL AG also agree to jointly request that the Court accept SGL AG's guilty plea and immediately impose sentence on the day of arraignment. Should the Court reject the agreed-upon disposition of the case, SGL AG will be free to withdraw its plea.

SGL AG and its subsidiaries have agreed to fully cooperate with the United States in the

⁶ SGL AG also agrees to guarantee the payment of a \$10 million criminal fine called for in the separate plea agreement between the United States and SGL AG's Chief Executive Officer, Robert J. Koehler.

conduct of the present investigation of the graphite electrode industry and any litigation or other proceedings to which the United States is a party resulting therefrom. Such cooperation includes, but is not limited to, the production of relevant documents under the control of SGL AG and its subsidiaries. SGL AG must also use its best efforts to secure, in connection with the present investigation and any litigation resulting therefrom, the full and truthful cooperation of current directors, officers and employees of SGL AG, including its subsidiaries, with relevant information who are identified by the United States. Such cooperation includes testifying truthfully in trial and grand jury proceedings.

Also pursuant to the Plea Agreement, the United States agrees, subject to the continuing full cooperation of SGL AG and its subsidiaries, not to bring further criminal proceedings against SGL AG or its subsidiaries for any act or offense committed prior to the date of the Plea Agreement undertaken in connection with any antitrust conspiracy involving the sale or manufacture of graphite electrodes. Subject to their continuing cooperation, present and former directors, officers, and employees of SGL AG and its subsidiaries (other than Robert J. Koehler, SGL AG's Chief Executive Officer, with whom the United States has entered into a separate plea agreement) will receive the same non-prosecution protection.

V. THE SENTENCING GUIDELINES

A. Robert J. Koehler

Since this offense occurred after November 1, 1987, the Sentencing Guidelines apply. The United States calculates Robert Koehler's sentencing guideline as follows:

Base Offense Level (U.S.S.G. § 2R1.1)	10
Volume of Commerce (>\$400 million) (U.S.S.G. § 2R1.1(b)(2))	+7
Role in the Offense (U.S.S.G. § 3B1.1(a))	+4

Acceptance of Responsibility (U.S.S.G. § 3E1.1)

-3

Total Offense Level

18

1. Imprisonment

The base offense level for an antitrust offense is 10 pursuant to § 2R1.1. An additional 7 points is added to the base offense level of 10 because the volume of affected commerce for the period of the charged conspiracy, mid-1992 through mid-1997, is in excess of \$400 million. Pursuant to § 3B1.1, four points are added to the level 17 because Robert Koehler was an organizer or leader of the conspiracy to fix the price and allocate the volume of graphite electrodes sold in the United States and elsewhere, a criminal activity that involved five or more participants. Mr. Koehler qualifies for a 3 point downward adjustment for acceptance of responsibility, bringing his total offense level to 18.

Mr. Koehler has no known prior criminal record. Accordingly, pursuant to Guideline § 4B1.1, his Criminal History is a Level I. Together with the total offense level 18, Mr. Koehler's imprisonment range is 27 to 33 months.

2. Guidelines Fine Range

Pursuant to § 2R1.1(c), the Guidelines fine range for an individual is 1% to 5% of the volume of commerce. SGL AG, through its United states subsidiary, SGL Carbon Corporation, had a volume of commerce in the United States of \$485 million. Accordingly, Koehler's Guidelines fine range is \$4.85 million to \$24.25 million. Because any Guidelines fine would exceed the \$350,000 statutory maximum for individuals under the Sherman Act, the fine must be supported by the alternative fine provisions of 18 U.S.C. § 3571(d). This statute provides that a defendant "may be fined not more than the greater of twice the gross gain or twice the gross loss . . ." (i.e., pecuniary loss caused to victims). The parties

have not calculated the amount of the overcharge to customers. However, the total volume of affected commerce for the charged conspiracy period from all conspirators is close to \$1.7 billion. Even a nominal overcharge to customers of 5%⁷ would, when doubled, provide for a maximum fine under the alternative sentencing provision of approximately \$170 million. Thus, the parties agree that double the gain or loss would exceed the agreed-upon fine of \$10 million.

B. SGL AG

Since this offense occurred after November 1, 1987, the Sentencing Guidelines apply. The United States calculates SGL AG's sentencing guideline as follows:

1. Commerce

\$485,000,000	Volume of Commerce (U.S. sales of graphite electrodes by SGL Carbon Corp. for July 1992 - June 1997)
\$ 97,000,000	Base Fine (20%) (U.S.S.G. § 2R1.1(d)(1)) and § 8C2.4(b)

2. Culpability Score

Base Level [§8C2.5(a)]	5
Over 5,000 employees and high level personnel involved [§8C2.5(b)]	5
Lack of Effective Antitrust Program [§8C2.5(f)]	0
Acceptance of Responsibility and Full Cooperation [§8C2.5(g)(2)]	- 2
Total Culpability Score	+ 8
1.60 - 3.20	Multiplier (U.S.S.G. §8C2.6)

3. Guidelines Fine Range

\$ 155,200,000 - \$310,400,000 (U.S.S.G. §8C2.7)

⁷ Numerous civil suits have been settled by members of the graphite electrodes conspiracy reflecting overcharges in excess of 5%.

Because the Guidelines fine exceeds the \$10 million statutory maximum under the Sherman Act, the fine must be supported by the alternative fine provisions of 18 U.S.C. §3571(d). This statute provides that a defendant “may be fined not more than the greater of twice the gross gain or twice the gross loss . . .” (i.e., pecuniary loss caused to victims). The parties have not calculated the amount of the overcharge to the customers. However, the total volume of affected commerce for the charged conspiracy period from all conspirators is close to \$1.7 billion. Even a nominal overcharge to customers of as little as 5% would, when doubled, provide for a maximum fine under the alternative sentencing provision of approximately \$170 million. Thus, the United States respectfully submits that double the gain or loss would exceed the agreed-upon fine of \$135 million.

VI. GOVERNMENT’S SENTENCING RECOMMENDATION

A. Robert J. Koehler

Based upon a total offense level of 18 and a Criminal History Level I, the imprisonment range for Robert J. Koehler is 27 to 33 months. The Plea Agreement between the United States and Robert J. Koehler calls for a sentence requiring Robert J. Koehler to serve no term of imprisonment, probation, community confinement or home detention. The cooperation Mr. Koehler has supplied and promises to supply in the future, including producing relevant documents under his control, making himself available for interviews and responding fully and truthfully to all inquiries of the United States, including testifying in trial and grand jury proceedings, constitutes substantial assistance in the investigation and prosecution of another who has committed an offense. Pursuant to § 5K1.1 of the U.S.S.G., the Government recommends that the Court depart downward from Robert J. Koehler’s Guidelines imprisonment range of 27 to 33 months in recognition of the defendant’s substantial

assistance to authorities in the prosecution of another individual and impose a sentence which includes no term of imprisonment, probation, community confinement or home detention, as called for by the Plea Agreement.

The Plea Agreement also calls for and the United States recommends that the Court impose a sentence requiring Robert J. Koehler to pay a fine to the United States in the amount of \$10 million to be paid in six installments in accordance with the schedule outlined earlier. The agreed-upon fine is within the United States Sentencing Guidelines fine range. As noted, however, the United States, respectfully requests that the Court waive the requirement for interest due to Mr. Koehler's inability to pay. The United States' determination that Mr. Koehler is unable to pay interest is based upon an assessment of Mr. Koehler's present and future financial condition.

The United States believes the agreed-upon sentence is appropriate. The Plea Agreement calls for a fine, but no incarceration based on the substantial assistance already given and promised by the defendant. This concession also recognizes that the United States has no jurisdiction over Mr. Koehler, a German citizen, who, in fact, resides outside the United States and is not subject to extradition. Thus, Mr. Koehler could avoid any attempt to prosecute him by simply remaining outside the United States. Moreover, by agreeing to submit himself to the jurisdiction of the United States, Mr. Koehler will be the first individual in this investigation to plead guilty. He has also agreed to cooperate in the continuing investigation and can provide valuable assistance against remaining subjects, both corporate and individual. Finally, the Plea Agreement with Mr. Koehler was negotiated contemporaneously with the Plea Agreement with SGL AG, and the Plea Agreement with SGL AG was contingent on a resolution of the case against Mr. Koehler. Taken together, these Plea Agreements provide substantial

deterrence through enormous fines, assist the victims of the conspiracy who have filed civil suits seeking damages, and avoid prolonged and complicated trials and hearings on guilt and sentencing.

Mr. Koehler has also agreed to pay a fine of \$10 million. Pursuant to the Plea Agreement, SGL AG has agreed to guarantee payment of the fine.⁸ In fact, counsel for SGL AG has represented that it is permissible under German law for the company to pay Mr. Koehler's fine and SGL AG will, in fact, pay the fine. Even under these circumstances, we believe the fine to be appropriate. The magnitude of the fine sends a clear message regarding the role in the conspiracy and culpability of Mr. Koehler. It sends a strong signal of deterrence. Moreover, the company's decision to assume responsibility for Mr. Koehler's fine creates some level of indebtedness, even if only a moral one, between Mr. Koehler and the stockholders of SGL AG. Imposing the stigma on the defendant of having been sentenced to the largest antitrust fine ever by an individual may be more symbolic than substantive, but given Mr. Koehler's German citizenship, it is the most significant punishment and deterrent available and thus appropriate.

B. SGL AG

The agreed-upon fine is below the minimum of the United States Sentencing Guidelines fine range due to SGL AG's inability to pay a higher fine. See U.S.S.G. 8C3.3(b). The Rule 11(e)(1)(C) plea agreement calls for and the United States recommends that the Court impose a sentence requiring

⁸ Based on this representation the United States will stipulate that such payment is permissible under German law, and we respectfully join the defendants' request that the Court make such a finding on the record at the time of sentencing.

SGL AG to pay a fine to the United States in the amount of \$135 million over a period of five years⁹, according to the following schedule: the first installment in the amount of \$13.5 million will be payable within 90 days from the date of imposition of sentence; the second installment in the amount of \$13.5 million will be payable on the first anniversary of the date of sentencing; and four successive payments of \$27 million will be payable on each of the second, third, fourth, and fifth anniversaries of the date of sentencing. Pursuant to 18 U.S.C.

§ 3612(f)(3)(A), the Government respectfully requests that the Court waive the requirement for interest due to the SGL AG's inability to pay.

The United States' determination that SGL AG is unable to pay a fine higher than that recommended is based on an assessment of SGL AG's present and projected financial condition and on the other large liabilities SGL AG faces resulting from its unlawful conduct. On June 30, 1998, as a result of the then pending antitrust matters, SGL AG established a reserve of DM 410 million.¹⁰ When the reserve was established, SGL AG anticipated that future criminal fine payments and other damages from unsettled civil and class action cases, would be covered by the reserve. More recently, however, due to more accurate and revised estimates of the criminal fine and civil payments, it became clear that the established reserve was insufficient to cover all payments, including a Guidelines fine, even at the minimum of the range. In formulating its recommendation that SGL AG pay a criminal fine to the United States in the amount of \$135 million, the United States reviewed the projected revenues of SGL

⁹ SGL AG also guarantees the payment of the \$10 million fine called for in the Plea Agreement between the United States and Robert J. Koehler.

¹⁰ At that time, the DM 410 million reserve amounted to approximately \$245 million. Obviously, this amount varies with fluctuations in the exchange rate.

AG to determine what additional monies were available to pay a criminal fine.

The United States, with a team of lawyers and accountants, met with counterparts from SGL AG who provided all relevant and current and projected financial information and answered all questions asked. The United States also considered the damage payments SGL AG will almost certainly have to make to civil plaintiffs which were injured by the conspiracy and to other parties (such as the Canadian government and the European Union) to which SGL AG may be liable for its participation in the conspiracy. In essence, the below Guidelines minimum fine (but still \$25 million larger than the fine paid by UCAR International which had the largest United States market share), the payment schedule, and the absence of interest reflect a public-interest balancing of the need to punish SGL AG for its participation in this egregious conspiracy against the need to avoid jeopardizing the company's continued viability.

The United States also recommends that the Court impose no order of restitution because SGL AG has been sued by the victims of this conspiracy--all sophisticated companies represented by knowledgeable, private antitrust counsel. Class action suits have been filed, as well as suits initiated by other groups of graphite electrode customers, seeking treble damages and attorneys fees as provided for persons damaged by violations of the antitrust laws under Section Four of the Clayton Act, 15 U.S.C. § 4. Given the remedies afforded victims of antitrust crimes and the active involvement of private antitrust counsel representing the victims in this case, the need to fashion a restitution order is outweighed by the difficulty the Court would encounter in attempting to determine the losses suffered by all of the many victims and the undue complication and prolongation of the sentencing process.

VII. CONCLUSION

For the reasons stated above, the United States respectfully requests that the Court impose a sentence consistent with the terms of the Plea Agreements between the United States, Robert J. Koehler and SGL AG; that is, as to Robert J. Koehler, that the Court depart downward from Mr. Koehler's Guidelines imprisonment range of 27 to 33 months in recognition of the Mr. Koehler's substantial assistance to authorities in the prosecution of others and impose a sentence which includes no term of imprisonment, probation, community confinement or home detention, and which includes a requirement that Robert J. Koehler pay a fine in the amount of \$10 million payable over five years with no interest accruing due to the defendant's inability to pay, and, as to SGL AG, that SGL AG be required to pay a criminal fine of \$135 million also payable over five years with no interest accruing due to inability to pay.

Dated:

Respectfully submitted,

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ROBERT J. KOEHLER,)
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Defendants.)

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of June 1999, a copy of the Government's Sentencing Memorandum has been express mailed to counsel of record for the defendants as follows:

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